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Message Text

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DRAFTED BY TREASURY:JGRIFFIN:EB/IFD/ODF:RKAUZLARICH:MW
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E.O. 11652: N/A

TAGS: EINV, OECD

SUBJECT: COMMITTEE ON INTERNATIONAL INVESTMENT AND MULTINATIONAL ENTERPRISES (CIME): PREPARATION FOR BADGER BELGIUM CASE.

REF: OECD PARIS 8636

1. US AGREES WITH BASIC THRUST OF HIGHLY CONSTRUCTIVE ABRAMOWSKI APPROACH DESCRIBED PARAS 2-4 REFTEL. OUR FUNDAMENTAL CONCERN IS TO PROTECT THE INTEGRITY OF THE CONSULTATIVE PROCESS ASSOCIATED WITH THE OECD GUIDELINES
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AND THE ROLE OF THE CIME AS A MECHANISM FOR EXCHANGING VIEWS ON ISSUES REGARDING MNE OPERATIONS. HOWEVER, WE MUST FIRMLY RESIST ANY ATTEMPT TO TURN THE CIME INTO A SEMI-JUDICIAL BODY REVIEWING THE BEHAVIOR OF INDIVIDUAL FIRMS.

WERE GENERAL INTEREST AMONG CIME MEMBERS TO DISCUSS

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WITHIN THE PARAMETERS WHICH ABRAMOWSKI HAS OUTLINED THE GENERAL PROBLEM OF BANKRUPTCIES. HOWEVER, WE WOULD WANT TO SEE SUCH A DISCUSSION FOCUS, ON THE BASIS OF NON-DISCRIMINATION, NOT ONLY ON THE SITUATION OF WHOLLY-OWNED SUBSIDARIES OF MNES BUT WHOLLY-OWNED SUBSIDIARIES OF DOMESTIC FIRMS AS WELL. WE WOULD OPPOSE HOWEVER

CONSIDERATION OF SPECIFIC CASES IN SUCH A DISCUSSION.

3. WE FIND THE STATEMENT ABRAMOWSKI ENVISAGES (PARA 5 REFTEL) INAPPROPRIATE FOR EITHER CIME RECORDS OR THE PRESS. THERE IS NO JUSTIFICATION FOR DEPARTING FROM ESTABLISHED CIME PRACTICE OF AN INFORMAL SUMMARY OF THE MEETING PREPARED BY THE SECRETARIAT. TO HIGHLIGHT THIS PARTICULAR ASPECT OF THE CIME MEETING FOR SPECIAL TREATMENT, ESPECIALLY IN THE ATMOSPHERE THAT HAS BEEN CREATED ABOUT THIS CASE, WOULD IN EFFECT RESULT IN THE SEMI-JUDICIAL COMPLAINT PROCEDURE WE ARE TRYING TO AVOID.

4. WE APPRECIATE ABRAMOWSKI'S UNDERSTANDING OF THE DANGERS AND SENSITIVITIES INVOLVED IN THIS CASE. HOWEVER, WE DISAGREE THAT LESS THAN FULL ACQUIESCENCE TO THE BEL-GIAN DEMANDS WOULD JUSTIFY HIS "PAPER TIGER" ANALOGY OR IMPLY A LACK OF GOOD FAITH. FIRST AND FOREMOST, THE GUIDELINES ARE VOLUNTARY. ACCUSATIONS THAT ONE COMPANY IS NOT ABIDING BY THE "SPIRIT OF THE GUIDELINES" NEITHER JUSTIFIED THE SORT OF CIME INVOLVEMENT WHICH THE BELGIAN GOVERNMENT CONTEMPLATES NOR DOES IT CALL INTO QUESTION THE GENERAL EFFECTIVENESS OF THE GUIDELINES.
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WE FURTHER BELIEVE THAT PROPONENTS OF BINDING CODES IN THE UN TNC CODE EXERCISE WILL NOT BE SWAYED BY OECD INVESTIGATIONS OF INDIVIDUAL CASES OF MNE MISBEHAVIOR. THEY MAY BE INFLUENCED HOWEVER BY AN EFFECTIVE CON-SULTATIVE PROCESS WHICH ALLOWS FOR THE EXCHANGE OF VIEWS ON GENERAL PROBLEMS YET STILL PRESERVES THE SUPREMACY OF NATIONAL LAW IN THE CASE OF DISPUTES WITH MNE.

5. US OPPOSES ANY STATEMENT TO THE PRESS ON THE BADGER OR ANY OTHER CASE; OR ON ANY OTHER ASPECT OF THE CIME MEETING BY THE MISSION, OECD SECRETARIAT, OR CIME. THE PRINCIPLE ON WHICH VOGELAAR DISCOURAGED TV COVERAGE, I.E., THAT THE CIME IS AN INTER-GOVERNMENTAL GROUP ENGAGED IN A CONFIDENTIAL MEETING SHOULD BE THE BASIS FOR RESPONSE TO ANY PRESS INQUIRIES. WE RECOGNIZE THAT PRESS INTEREST IN CIME HANDLING OF THIS AND OTHER CASES WILL BE HIGH BUT MISSION SHOULD FOLLOW THIS LINE. THESE VIEWS SHOULD ALSO BE STRONGLY CONVEYED TO THE OECD

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SECRETARIAT.

6. POSTS SHOULD TRANSMIT ABOVE TO ABRAMOWSKI AND OECD SECRETARIAT ASAP.
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